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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

C.M., on her own behalf and on behalf of her
minor child, B.M.; et al.

Plaintiffs,

v.

United States of America,

Defendant.

No. 2:19-cv-05217-SRB

**DECLARATION OF LUCY
MCMILLAN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SANCTIONS**

A.P.F. on his own behalf and on behalf of his
minor child, O.B.; et al.

Plaintiffs,

v.

United States of America,

Defendant.

No. 2:20-cv-00065-SRB

1 Lucy McMillan hereby declares, pursuant to 28 U.S.C. § 1746, as follows:

- 2 1. I am a member of the State Bar of New York, and have been admitted to the bar of the
3 District of Arizona pro hac vice. I am a counsel with the law firm of Arnold & Porter,
4 which serves as counsel to Plaintiffs C.M., on her own behalf and on behalf of her
5 minor child, B.M.; L.G., on her own behalf and on behalf of her minor child, B.G.;
6 M.R., on her own behalf and on behalf of her minor child, J.R.; O.A., on her own
7 behalf and on behalf of her minor child, L.A.; and V.C., on her own behalf and on
8 behalf of her minor child, G.A., in the above-captioned case.
- 9 2. I submit this declaration in support of Plaintiffs' Motion for Sanctions.
- 10 3. The parties substantially completed fact discovery in the above-captioned case on July
11 15, 2022, and extended the deadline only for the purpose of completing specific
12 limited discovery. Defendant produced handwritten notes and other hard copy
13 documents for key witnesses after the July 15, 2022 fact discovery deadline.
- 14 4. Defendant produced hard copy documents and handwritten notes for former Customs
15 and Border Protection ("CBP") Commissioner Kevin McAleenan on September 30,
16 2022.
- 17 5. On October 14, 2022, Defendant informed Plaintiffs that it had produced handwritten
18 notes penned by Matthew Albence, former Executive Associate Director for ICE's
19 Enforcement and Removal Operations, and hardcopy documents with annotations by
20 former Acting Secretary Elaine Duke, on August 15, 2022.
- 21 6. Defendant produced hard copy documents for former Department of Homeland
22 Security ("DHS") Secretary Kirstjen Nielsen, some of which include handwritten
23 comments, on September 28, 2022 and November 2, 2022.
- 24 7. Defendant produced handwritten notes and hard copy documents for former DHS
25 Secretary John Kelly on October 24, 2022 and November 2, 2022.
- 26 8. Defendant produced handwritten notes for former United States Citizenship and
27 Immigration Services ("USCIS") Director Francis Cissna on October 26, 2022.

1 9. Defendant re-produced thousands of pages of ICE documents that were originally
2 produced stripped of their track changes and comments on August 31, 2022,
3 September 7, 2022, September 14, 2022, and September 16, 2022 (the “Annotated
4 Documents”).

5 10. On October 5, 2022, the parties held a meet and confer to discuss Defendant’s failure
6 to timely collect and produce the Annotated Documents and certain handwritten notes
7 and hardcopy documents. During the call, the government suggested re-opening
8 depositions to allow Plaintiffs to examine witnesses with the Annotated Documents
9 and belatedly produced handwritten notes and hardcopy documents. Plaintiffs
10 suggested that the Annotated Documents and late-produced handwritten notes and
11 hardcopy documents be admitted at trial if offered by Plaintiffs, and that Defendant be
12 precluded from contesting or otherwise using the late-produced handwritten notes and
13 hardcopy documents at trial. The parties were unable to reach resolution on the
14 appropriate remedy.

15 11. Attached to this declaration are 25 exhibits, lettered A-Y:

16 a. Exhibit A is a copy of an October 26, 2022 email exchange between Terra
17 Fulham, counsel for *A.P.F.* Plaintiffs, and Phil MacWilliams, counsel for
18 Defendant, recapping an October 23, 2020 call regarding Defendant’s
19 document search efforts and MIDP obligations;

20 b. Exhibit B is a copy of an August 10, 2022 email from Irina Majumdar, counsel
21 for Defendant, to Teresa Park, counsel for the *A.P.F.* Plaintiffs, notifying
22 Plaintiffs that Defendant had discovered that some ICE documents were
23 produced without track changes and comments and that Defendant was
24 working to produce new versions of these documents;

25 c. Exhibit C is a copy of a June 15, 2020 email exchange between Phil
26 MacWilliams, counsel for Defendant, and Diana Reiter, counsel for the *C.M.*
27 Plaintiffs, with an attachment that contains proposed custodians identified by
28 Defendant;

- d. Exhibit D is a copy of an August 3, 2020 email exchange between Phil MacWilliams, counsel for Defendant, and Erik Walsh, counsel for the *C.M.* Plaintiffs, with an attachment that contains an updated list of proposed policy-level custodians by Defendant;
- e. Exhibit E is a copy of an excerpt of the transcript of the September 9, 2022 deposition of Thomas Homan, former Acting ICE Director;
- f. Exhibit F is a copy of an October 7, 2022 email exchange between Phil MacWilliams, counsel for Defendant, and Lucy McMillan, counsel for the *C.M.* Plaintiffs, concerning the destruction of Thomas Blank's notes;
- g. Exhibit G is a copy of an October 3, 2022 email exchange between Phil MacWilliams, counsel for Defendant, and Erik Walsh, counsel for the *C.M.* Plaintiffs, stating that DOJ alerted Plaintiffs during Kevin McAleenan's deposition that Mr. McAleenan maintained handwritten notes;
- h. Exhibit H is a copy of an excerpt of the transcript of the September 13, 2022 deposition of Kevin McAleenan, former CBP Commissioner;
- i. Exhibit I is a copy of an October 14, 2022 email exchange between Phil MacWilliams, counsel for Defendant, and Lucy McMillan, counsel for the *C.M.* Plaintiffs, in which Defendant declined to provide a detailed summary of its efforts to collect relevant handwritten notes at the outset of discovery, explained it had asked agencies to search for handwritten notes in June 2022, outlined its renewed efforts to collect handwritten notes, and noted it had produced handwritten notes for Matthew Albence and hard copy documents for Elaine Duke two months prior;
- j. Exhibit J is a copy of CD-US-0033959T, a re-produced ICE document that was originally produced stripped of its track changes and comments;
- k. Exhibit K is a copy of CD-US-0102694T, a re-produced ICE document that was originally produced stripped of its track changes and comments;

- 1 l. Exhibit L is a copy of CD-US-0044527T, a re-produced ICE document that was
- 2 originally produced stripped of its track changes and comments;
- 3 m. Exhibit M is a copy of an excerpt of the transcript of the September 9, 2022
- 4 deposition of Thomas Homan, former Acting ICE Director;
- 5 n. Exhibit N is a copy an excerpt of the transcript of the June 7, 2022 deposition
- 6 of Chad F. Wolf, former Chief of Staff to Department of Homeland Security
- 7 Secretary Kirstjen Nielsen;
- 8 o. Exhibit O is a copy an excerpt of the transcript of the July 15, 2022 deposition
- 9 of Judge Tracy Short, former counselor to DHS Secretary Nielsen;
- 10 p. Exhibit P is a copy of CD-US-0219621, handwritten notes by former DHS
- 11 Secretary John Kelly produced by Defendant on October 24, 2022, with
- 12 highlights added;
- 13 q. Exhibit Q is a copy of CD-US-0219533, handwritten notes by former CBP
- 14 Commissioner Kevin McAleenan produced by Defendant on September 30,
- 15 2022, with highlights added;
- 16 r. Exhibit R is a copy of an excerpt of the transcript of the September 13, 2022
- 17 deposition of Kevin McAleenan, former CBP Commissioner;
- 18 s. Exhibit S is a copy of CD-US-0219492, handwritten notes by former CBP
- 19 Commissioner Kevin McAleenan produced by Defendant on September 30,
- 20 2022, with highlights added;
- 21 t. Exhibit T is a copy of an excerpt of the transcript of the September 13, 2022
- 22 deposition of Kevin McAleenan, former CBP Commissioner;
- 23 u. Exhibit U is a copy of CD-US-0219498, handwritten notes by former CBP
- 24 Commissioner Kevin McAleenan produced by Defendant on September 30,
- 25 2022, with highlights added;
- 26 v. Exhibit V is a copy of an excerpt of the transcript of the September 13, 2022
- 27 deposition of Kevin McAleenan, former CBP Commissioner;
- 28

- 1 w. Exhibit W is a copy of CD-US-0219534, handwritten notes by former CBP
2 Commissioner Kevin McAleenan produced by Defendant on September 30,
3 2022, with highlights added;
- 4 x. Exhibit X is a copy of an excerpt of the transcript of the June 24, 2022
5 deposition of Matthew Albence, former Executive Associate Director for ICE's
6 Enforcement and Removal Operations;
- 7 y. Exhibit Y is a copy of CD-US-0198073AT, a re-produced ICE document that
8 was originally produced stripped of its track changes and comments.

9
10 12. I declare under penalty of perjury that the foregoing is true and correct. Executed on
11 December 14, 2022 in New York, New York.

12 By /s/ Lucy McMillan

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7 *in the District of Columbia, and*
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